

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

MICHAEL R. CLARK,

Plaintiff,

v.

WALGREEN CO.

Defendant.

Civil Action No. 08-2088
JURY TRIAL DEMANDED

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Defendant Walgreen Co., (hereinafter "Walgreens") pursuant to Rule 56 of the Federal Rules of Civil Procedure and Local Rule 7.2 hereby files its Motion for Summary Judgment and respectfully requests that this Court enter an order dismissing Plaintiff's claims alleging Interference and Retaliation under the Family Medical and Leave Act of 1993 ("FMLA") (Count I of his Complaint) and his claim under Section 510 of the Employee Retirement Income Security Act of 1974 ("ERISA") alleging interference with rights under ERISA (Count II of his Complaint), since Plaintiff has failed to establish a prima facie case of interference or retaliation under the FMLA, and since Plaintiff has failed to establish a prima facie case of interference under Section 510 of ERISA. Further, even if Plaintiff can establish a prima facie case of interference or retaliation under the FMLA or of interference under Section 510 of ERISA, Plaintiff is unable to establish that the reason offered for the adverse employment action is pretextual or that the Defendant lacked an honest belief in the reason given for the adverse

employment action. Defendant submits that there is no genuine issue of material fact in dispute and that Defendant Walgreens is entitled to a judgment in its favor as a matter of law.

In support of its Motion for Summary Judgment, Defendant submits a Supporting Memorandum of Law, a Concise Statement of Material Facts Not in Dispute ("CSMF"), and files portions of Depositions and Exhibits cited in the CSMF.

Respectfully submitted,

LEITNER, WILLIAMS, DOOLEY & NAPOLITAN, PLLC

s/ J. Gregory Grisham
J. Gregory Grisham #013810
Attorney for Defendant
The Brinkley Plaza
80 Monroe Avenue, Suite 800
Memphis, TN 38103
901-527-0214
greg.grisham@leitnerfirm.com

CERTIFICATE OF SERVICE

I, J. Gregory Grisham, attorney for Defendant, certify that I have this day served a copy of this document through the Court's ECF System to:

Mr. William Lewis Jenkins, Jr.
Mr. Dean Dedmon
Attorneys for Plaintiff
Wilkerson Gauldin Hayes & Jenkins
112 West Court Street, P. O. Box 220
Dyersburg, TN 38025-0220
Tel. No. 731-286-2401
Fax No. 731-286-2294
ljenkins@wghatty.com

This the 1st day of July 2009.

s/ J. Gregory Grisham
J. Gregory Grisham